

TENTATIVE RULINGS for CIVIL LAW and MOTION

June 4, 2009

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6942

TENTATIVE RULING

Case: **Brunson v. Oliva**
Case No. CV CV 04-09
Hearing Date: **June 4, 2009** **Department Fifteen** **9:00 a.m.**

Plaintiff Jonathan Brunson's motion to strike or tax costs is **GRANTED**. (Code Civ. Proc., § 1033.5, subds. (a)(12) & (b)(1).) Defendant's exhibits were not reasonably helpful to aid the trier of fact. Defendant's Code of Civil Procedure section 998 offer to "waive costs and attorney's fees and waives his right to pursue a malicious prosecution action in connection with this action, in exchange for Plaintiff Jonathan Brunson's entry of a request for dismissal with prejudice, with each party to bear their own costs and attorney's fees" is uncertain. (*Chen v. Interinsurance Exch. Auto Club* (2008) 164 Cal.App.4th 117.)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Deckert v. Fedex Freight West, Inc.**
Case No. CV CV 07-2758
Hearing Date: **June 4, 2009** **Department Fifteen** **9:00 a.m.**

Plaintiff's evidentiary objections are **OVERRULED**.

Defendant's evidentiary objection numbers 1, 4 (as to complaints by other drivers), 9 (as to the second sentence), 10, 12 (as to the term "slanderous"), 15 (as to the second sentence), 16 (as to the second sentence), 18 (as to the content of court documents), 19 (as to the content of the April 24, 2007, letter), 21 (as to the content of the letter from the EDD), 22, 23, 24 (as to the content of the June 26, 2007, letter), 26 (as to the content of the termination letter), 27 (as to the second sentence), 30, and 31 are **SUSTAINED**. All other evidentiary objections by the defendant are **OVERRULED**.

Defendant's request for judicial notice is **GRANTED**. (Evid. Code, § 452, subd. (d).)

The motion for summary adjudication based on the after-acquired evidence doctrine is **DENIED**. None of the authorities cited bar all relief in factual circumstances similar to those here. Unlike *Camp v. Jeffer, Mangels, Butler & Marmaro* (1995) 35 Cal.App.4th 620, the job qualification in this case is based on the defendant's internal, self-imposed requirements. (Defendant's Separate Statement of Undisputed Material Facts ("SSF") 3 and 6-10.) There is no evidence that the plaintiff had engaged in any misconduct during his employment with the defendant prior to the incident at issue. (Plaintiff's SSF 1.) There is no direct connection between the plaintiff's application fraud and the alleged attempted arson at the Ramada Inn. Moreover, there is a strong public interest in ensuring that employers do not use the fact of arrest alone in suspending, firing, or refusing to hire persons who are not eventually convicted of a crime. (Lab. Code, § 432.7, subd. (a); *Pitman v. City of Oakland* (1988) 197 Cal.App.3d 1037.)

Defendant asks the Court to limit the plaintiff's remedies pursuant to the after-acquired evidence doctrine. Limiting the plaintiff's remedies would not completely dispose of any cause of action and is, therefore, not a proper ground for summary adjudication. (Code Civ. Proc., § 437c, subd. (f)(1).)

The motion for summary adjudication of the first cause of action based on the December 29, 2006, suspension is **GRANTED**. (Defendant's SSF 27 and 29; Deckert Declaration ¶ 8.)

The motion for summary adjudication of the first cause of action based on the March, 2007, suspension is **DENIED**. (Code Civ. Proc., § 437c, subd. (e); Defendant's SSF 30-31, 34-42, 44, and 63; Zenn Declaration ¶ 2 and Exhibit A thereto; King Declaration ¶¶ 4-5 and 8 and Exhibits B, C and D thereto; Deckert Declaration ¶ 13.)

The motion for summary adjudication of the first cause of action based on the plaintiff's discharge is **DENIED**. (Code Civ. Proc., § 437c, subd. (e); Defendant's SSF 30-31, 34-42, 44, 49, 55, 57, and 63; Plaintiff's SSF 10; Zenn Declaration ¶ 2 and Exhibits A and B thereto; King Declaration ¶¶ 4-5 and 8 and Exhibits B, C and D thereto; Deckert Declaration ¶¶ 13 and 16-18 and Exhibit 9 thereto; Zenn Depo. 85: 4-15.)

The motion for summary adjudication of the second cause of action is **DENIED**. (Code Civ. Proc., § 437c, subd. (e); Defendant's SSF 30-31, 34-42, 44, 49, 55, 57-58, and 63-64; Zenn Declaration ¶ 2 and Exhibits A and B thereto; King Declaration ¶¶ 4-5 and 8 and Exhibits B, C and D thereto; Deckert Declaration ¶¶ 13 and 16-18 and Exhibit 9 thereto; Zenn Depo. 85: 4-15.)

Based on the ruling as to the first and second causes of action, the motion as to the third cause of action is **DENIED**.

The motion for summary adjudication of the fourth cause of action is **DENIED**. (Plaintiff's SSF 34; Deckert Depo. 471: 1-9 and 472: 15-23; Deckert Declaration ¶ 12.) The statements by the unidentified Fedex truck drivers are different from the insults and ridicules in *Krinsky v. Doe 6* (2008) 159 Cal.App.4th 1154. The drivers' statements contain facts capable of proof or

disproof, e.g., the statement that the plaintiff had burned down the hotel. Unlike the reporter in *James v. San Jose Mercury News, Inc.* (1993) 17 Cal.App.4th 1, the drivers charged the plaintiff with crimes. Unlike *Campanelli v. Regents of Univ. of Calif.* (1996) 44 Cal.App.4th 572, the statements here are not couched as “feelings”. Defendant has not established that the common interest privilege applies. There is no evidence concerning the purpose for the drivers’ discussion.

The motion for summary adjudication of the fifth cause of action is **GRANTED**. Plaintiff must show that the inferences favorable to him are more reasonable or probable than those against him. (*Leslie G. v. Perry & Associates* (1996) 43 Cal.App.4th 472.) It is possible that the information in the EDD’s April 27, 2007, notice came from a statement by the defendant. However, it is an equally reasonable possibility that EDD personnel made a mistake in their notice to the plaintiff. (Deckert Declaration ¶ 18 and Exhibit 10 thereto; Defendant’s SSF 70-73.) An employer’s statements to the EDD about the reason(s) for an employee’s discharge are absolutely privileged. (*Williams v. Taylor* (1982) 129 Cal.App.3^d 745.)

TENTATIVE RULING

Case: **FIA Card Services, N.A. v. Mercado**
Case No. CV G 09-604

Hearing Date: **June 4, 2009** **Department Fifteen** **9:00 a.m.**

The unopposed petition to confirm arbitration award by FIA Card Services, N.A. is **GRANTED**. (Code Civ. Proc., §§ 1285 *et seq.*)

Petitioner’s request for an award of costs in the amount of \$240.00 is **DENIED WITHOUT PREJUDICE**. Petitioner must file a verified memorandum of costs in support of this request. (Cal. Rules of Court, rule 3.1700(a)(1) (providing that a prevailing party who claims costs must serve and file a verified memorandum of costs within 15 days after the date of mailing of the notice of entry of judgment or the date of service of written notice of entry of judgment, or within 180 days after entry of judgment, whichever is first).)

If no hearing is requested, this tentative ruling is effective immediately. Petitioner is to serve a copy of the tentative ruling on respondent by June 4, 2009. No formal order pursuant to California Rules of Court, rule 3.1312, or further notice, except as stated herein, is required.

TENTATIVE RULING

Case: **Johnson v. Segura, et al.**
Case No. CV PM 08-1543

Hearing: **June 4, 2009** **Department Fifteen** **9:00 a.m.**

Plaintiff William Paul Johnson’s motion for preferential trial setting is **GRANTED**. (Code Civ. Proc., § 36, subd. (e).)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **The Erection Corp. v. Terra Nova Industries**
Case No. CV CV 09-651

Hearing Date: **June 4, 2009** **Department Fifteen** **9:00 a.m.**

Defendants Terra Nova Industries and International Fidelity Insurance Company's demurrer to plaintiff's complaint is **OVERRULED**. (Code Civ. Proc., § 430.10.) Plaintiff's complaint states facts sufficient to state each cause of action alleged in the complaint.

Defendants shall file their answer by June 12, 2009. (Cal. Rules of Court, rule 3.1320(g).)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **The Regents of the Univ. of Calif. v. Howard S. Wright Construction**
Case No. CV CV 07-1982

Hearing Date: **June 4, 2009** **Department Fifteen** **9:00 a.m.**

This matter is dropped from the calendar.

TENTATIVE RULING

Case: **Zasa v. Sutter Davis Hospital, et al**
Case No. CV PO 08-106

Hearing Date: **June 4, 2009** **Department Fifteen** **9:00 a.m.**

The motion to set aside the December 3, 2008, entry of default judgment against Brandon Donlin is **GRANTED**. (Code Civ. Proc., § 473, subd. (b).) Defendant shall file and serve his answer by June 4, 2009.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.